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May 26, 2021

Via Electronic Mail

Shonda Green
Executive Administrative Coordinator
Commonwealth of Massachusetts
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500

RE: **D.T.C. 21-2** – Petition of Charter Fiberlink MA-CCO, LLC and Time Warner Cable Information Services (Massachusetts), LLC for Designation as an Eligible Telecommunications Carrier.

Dear Ms. Green:

On behalf of Charter Fiberlink MA-CCO, LLC and Time Warner Cable Information Services (Massachusetts), LLC (collectively, the “Charter Entities”), attached is a request to amend the Charter Entities’ petition in the above-referenced proceeding.

Please feel free to contact the undersigned or Steve Bright of this office (617-239-0133) should you have any questions regarding this submission.

Very truly yours,

A handwritten signature in black ink, appearing to read "David W. Bogan", with a stylized flourish at the end.

David W. Bogan

Enclosure

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

In the Matter of)	
)	
Joint Application of Charter Fiberlink MA-CCO, LLC and Time Warner Cable)	
Information Services (Massachusetts), LLC)	D.T.C. 21-2
for Designation as Eligible)	
Telecommunications Carriers to Receive)	
Rural Digital Opportunity Fund Auction)	
(Auction 904) Support for Voice and)	
Broadband Services)	

**REQUEST TO AMEND PETITION OF CHARTER FIBERLINK MA-CCO, LLC AND
TIME WARNER CABLE INFORMATION SERVICES (MASSACHUSETTS), LLC**

Charter Fiberlink MA-CCO, LLC ("Charter Fiberlink") and Time Warner Cable Information Services (Massachusetts), LLC ("Time Warner") (collectively the "Charter Entities" or "Companies") hereby file this Amendment to their Joint Application submitted to the Department of Telecommunications and Cable ("Department") on January 6, 2021.¹

SUMMARY

Charter Communications, Inc. ("Charter"), through its affiliates, provides modern high-speed broadband, video, mobile, and voice services to more than 307,000 customers in Massachusetts.² With support from the FCC's Rural Digital Opportunity Fund ("RDOF"), Charter will soon bring modern high-speed broadband Internet service to more than 14,300 locations³

¹ See D.T.C. 21-2, Application of Charter Fiberlink MA-CCO, LLC and Time Warner Cable Information Services (Massachusetts), LLC for Designation as a Eligible Telecommunications Carriers to Receive Rural Digital Opportunity Fund Auction (Auction 904) Support for Voice and Broadband Services and Request for Expedited Review, filed January 6, 2021 (the "*Application*").

² Certain of the subjects and benefits discussed in this Supplement pertain to non-jurisdictional products and services. While those items are voluntarily included herein in order to provide a comprehensive view of the public interest benefits of designating the Charter Entities as eligible telecommunications carriers ("ETCs"), the Charter Entities respectfully reserve all rights relating to the inclusion of or reference to such information, including without limitation the Charter Entities' legal and equitable rights relating to jurisdiction, filing, disclosure, relevancy, due process, review, and appeal.

³ The FCC defines "locations" as "housing units" and "small businesses" that receive "consumer-grade broadband service." See *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund*

(spread over more than 1,200 mostly rural census blocks) in Massachusetts that currently lack these services. Charter will offer its voice and broadband offerings in these areas subject to the RDOF program rules and other applicable laws, as well as Charter's own service terms and policies.

To support this expansion of its network, Charter expects to receive over \$21 million in RDOF funding.⁴ Before it can complete this RDOF-supported expansion, however, the Charter Entities are required to obtain ETC designation from the Commonwealth for the census blocks and portions of the census blocks where Charter will receive RDOF support in Massachusetts (the "RDOF Census Blocks").⁵ To that end, the Charter Entities filed their Application for ETC designation in the above-referenced proceeding.

Since they filed the Application, however, the Charter Entities have discovered that certain census blocks in several states (including Massachusetts) were included in the RDOF Auction

Support Regarding Their Broadband Location Reporting Obligations, Public Notice, WC Docket No. 10-90, DA 16-1363 (2016).

⁴ See *Winning Bidder Summary, FCC Rural Digital Fund Phase I Auction, Auction ID: 904*, dated Dec. 7, 2020, available at: <https://docs.fcc.gov/public/attachments/DA-20-1422A2.pdf>. Once authorized to receive funding, Charter Fiberlink and Time Warner will be the entities receiving support payments and the entity that will meet the RDOF public interest obligations in Massachusetts.

⁵ The Charter Entities seek ETC designation in full census blocks where the full census block is eligible for RDOF support; in cases where a census block is only partially eligible for RDOF support, the Charter Entities seek ETC designation only as to the supported portion. The vast majority, but not all, census blocks included in the RDOF auction were included in full. See *Wireline Competition Bureau and Office of Economics and Analytics Release Updated List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction*, Public Notice, DA 20-665 (June 25, 2020), at p. 6 (stating "As the Commission made clear in the *Rural Digital Opportunity Fund Order*, eligible areas would include census blocks served by both price cap carriers and rate-of-return carriers *to the extent that the census block is in the price cap carrier's territory. That is, only the price cap portion of the census block is eligible.*") (emphasis added). Throughout this Response, Charter's use of the phrase "RDOF Census Blocks" should be understood to refer to full census blocks or *portions* of census blocks, where applicable.

Additionally, Exhibits A and B to the Application provides a list of the RDOF Census Blocks assigned by the FCC to CCO Holdings, LLC in Massachusetts. To the extent there is any inconsistency between the list of RDOF Census Blocks on that Exhibit and the list at the FCC's RDOF Dashboard (<https://auctiondata.fcc.gov/public/projects/auction904>), the list at the FCC's RDOF Dashboard shall control with respect to where the Charter Entities are seeking ETC designation and accordingly will have ETC obligations. In addition, in the event the FCC were to modify the census block award in the future, such as in response to a waiver petition or otherwise, any such modified census blocks shall constitute the RDOF Census Blocks for purposes of the ETC designation.

despite the fact that they are already served by a broadband provider, which ought to have disqualified these census blocks from inclusion in the RDOF program. Charter and the Charter Entities have recently filed a petition with the FCC seeking a partial waiver of their obligation to apply for support in the census blocks that are already served, including the already-served census blocks in Massachusetts.⁶ The Waiver Petition is included for the Department's reference as Attachment A.

As discussed below, it is possible that Charter will discover other census blocks that ought to be removed from the RDOF Census Blocks, for the same or similar reasons. Consequently, Charter anticipates that the FCC may modify the final list of RDOF Census Blocks. Similarly, the FCC may modify location counts and service deployment milestones within the RDOF Census Blocks.

Charter respectfully submits that in the Department's evaluation of the Application, the Department should maintain consistency between any state ETC requirements and the census blocks, location counts, and service deployment milestones for which RDOF recipients, such as the Charter Entities, must serve and/or comply. Ensuring consistency among these RDOF program requirements and Massachusetts's own ETC requirements will ensure certainty for RDOF award recipients as they build out their networks, as well as ensure the most efficient use of an RDOF recipient's existing resources. Accordingly, the Charter Entities hereby request that the Department incorporate, in any ETC designation Order, a process to conform (or "true up") the list of census blocks in which the Charter Entities are designated ETCs to reflect any future changes to Charter's RDOF Census Blocks and/or deployment areas. This request and Charter's proposed process are discussed more fully below.

⁶ *In the Matter of Rural Digital Opportunity Fund, Petition for Waiver*, FCC WC Docket No. 19-126 (May 11, 2021) ("Waiver Petition") (available at <https://www.fcc.gov/ecfs/filing/10511434226946>).

DISCUSSION

A. Charter has identified census blocks in Massachusetts that should not have been included in the RDOF program and has asked the FCC to remove them from the RDOF Census Blocks.

For RDOF, the FCC determined that support would be available only for specific eligible census blocks that were wholly unserved with broadband at speeds of at least 25/3 Mbps.⁷ In particular, the FCC excluded from eligibility: (1) census blocks where a CAF Phase II Auction winning bidder is required to deploy broadband; (2) census blocks where a Rural Broadband Experiment support recipient is required to deploy broadband; (3) census blocks where a terrestrial provider offers both voice and broadband of 25/3 Mbps according to the most recent publicly available Form 477 data; (4) census blocks awarded funding through the Rural Utility Service (“RUS”) ReConnect Program; and (5) census blocks awarded funding through other similar federal or state broadband subsidy programs to provide at least 25/3 Mbps service.⁸

The FCC directed its staff to identify these unserved census blocks, compile an initial list, and conduct a challenge process.⁹ FCC staff consulted with the U.S. Department of Agriculture’s RUS to exclude the portions of any census blocks that substantially overlapped with the RUS’s ReConnect Program,¹⁰ and FCC staff conducted a census block challenge process to eliminate from auction eligibility any census blocks that are already served. In October 2020, FCC staff issued its final list of eligible census blocks, which was largely based on 2019 data.¹¹

Through the RDOF Auction process, the FCC awarded providers support to serve eligible

⁷ *Rural Digital Opportunity Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, at para. 12 (Jan. 30, 2020)(“RDOF Order”).

⁸ *RDOF Order* at paras. 12-13.

⁹ *Id.* at paras. 12-14.

¹⁰ *Id.* at para. 13 and FN 31.

¹¹ See *Wireline Competition Bureau and Office of Economics and Analytics Announce Release Final List and Map of Eligible Areas for the RDOF Phase I Auction*, 35 FCC Rcd 11283 (Oct. 8, 2020)(available at <https://bit.ly/3tKnSJU>).

census blocks. Through its affiliates, Charter was named the winning provider for 14,344 locations (spread over 1,264 mostly rural census blocks) in Massachusetts.

In its *RDOF Order*, the FCC acknowledged that its data regarding broadband deployment in the areas receiving support under the RDOF program would need to be updated. It also recognized that these updates could affect location counts and service deployment milestones applicable to a given RDOF participant's census blocks.¹² As a result of the data used by the FCC, it was inevitable that the RDOF Auction would include some census blocks that were already served by an existing broadband provider at the time of the Auction and therefore should have been excluded.

Since completing the RDOF Auction, Charter has begun reviewing its RDOF-awarded census blocks on a nationwide basis,¹³ and has already identified certain areas in several states where a provider already serves, or will serve, a particular RDOF-awarded census block with high-speed broadband Internet access services. Charter became aware from the Massachusetts Broadband Institute (“MBI”) and others that MBI broadband grants were not reflected in the data sources that the auction relied on, and that Charter's winning bids included Massachusetts towns in which MBI had already awarded broadband support to other providers. In particular, Charter has identified 35 census block groups (“CBGs”)¹⁴ in Massachusetts that were included in the RDOF Auction – and which Charter ultimately won – but that are either partially or entirely ineligible for RDOF support.

Of these 35 CBGs, 28 are in municipalities where MBI awarded state broadband grants to

¹² See RDOF Order, paras. 45-55.

¹³ As of the date of this Supplement, Charter has reviewed approximately 1,000 census block groups out of the total 5,366 CBGs for which a Charter entity was a winning bidder.

¹⁴ A “census block group” comprises multiple individual census blocks.

wireline broadband providers other than Charter before the RDOF Auction through its “Last Mile Program.”¹⁵ In some cases, individual broadband projects are supported with municipal funds, in addition to support from MBI.

Under the terms of the grants issued by MBI, recipients are required to connect at least 96% of eligible locations within the relevant municipality.¹⁶ Based on information shared by MBI, almost all of the projects supported by the Commonwealth of Massachusetts through MBI that are the subject of this Petition are either completed or scheduled for completion by the end of 2021, except for five projects that are scheduled to be completed no later than the end of 2022.¹⁷ In addition, although the terms of the MBI Last Mile Program do not require all providers to offer gigabit-capable service, it is Charter’s understanding that in the 28 CBGs at issue, the MBI grantees have deployed or are deploying gigabit-capable networks.

In addition to the 28 CBGs that overlap MBI grants, Charter has also learned that two additional CBGs—representing the town of Russell, MA and an area in Westfield, MA in the vicinity of Westfield-Barnes Regional Airport—are already served by wireline providers other than Charter. Charter lacks knowledge as to the reason why these two areas were not excluded

¹⁵ See, generally, *Last Mile Programs*, Massachusetts Broadband Institute, <https://broadband.masstech.org/last-mile-programs> (last visited Apr. 7, 2021) (showing award areas and project status). The map does not yet include the MBI grants in Egremont and Monterey, which were only issued very recently, although Fiber Connect, which is constructing those networks, already had deployment in both towns underway prior to its agreement with MBI. A small portion of one of the CBGs, located in the town of Leyden, is outside of town boundaries and located in Bernardston, a non-MBI grantee town already served by Comcast. Charter discusses this CBG below.

¹⁶ See *Last Mile Program Policy*, Massachusetts Broadband Institute, <https://broadband.masstech.org/building-networks/last-mile/program-unserved-towns/last-mile-program-policy> (last visited Apr. 7, 2021) (funded programs for Last Mile Program must “reach at least 96% of a community’s residents and provide access to broadband speeds of 25/3 Mbps.”); see also Massachusetts Broadband Institute, *Flexible Grant Program Notice of Funding Availability* 4 (Oct. 5, 2017), <https://masstech.org/sites/mtc/files/documents/Legal/2018-MBI-01/Flexible%20Grant%20Program%20NOFA%20MBI-2018-01%20%28FINAL%29.pdf> (setting same 96% objective for Flexible Grant Program). It is Charter’s understanding that all MBI grants in areas that are the subject of this Petition require the provider to connect 96% or more of the municipality’s residents.

¹⁷ The only five third-party projects expected to extend into 2022 are those in the towns of Becket, Egremont, Middlefield, Monterey, and Tolland.

from the RDOF Auction; however, in both cases, a wireline broadband service provider is already present in each of the respective CBGs. It is Charter's understanding that the incumbent provider in Russell covers substantial portions of the town.¹⁸ The small area in Westfield, MA in which the pertinent CBG is located is in a developed area near the airport, and Charter has confirmed through a site visit that both Comcast and Westfield Gas & Electric (which operates Whip City Fiber) already appear to have facilities serving residential and commercial locations in the CBG.

Charter has also discovered three CBGs in Massachusetts in which Charter itself was previously awarded an MBI broadband grant to build out its to areas that Charter won in the RDOF Auction, but which Charter inadvertently omitted during the FCC's challenge process. Through the same MBI programs discussed above, Charter was awarded grants to connect 96% of eligible locations in the towns of Hancock, Sandisfield,¹⁹ and Tyringham, which encompass three CBGs which Charter inadvertently bid for and won in the RDOF Auction. Grant agreements for Charter to serve these towns using MBI (and in some instances town-specific) funding were authorized in July 2017, August 2019, and July 2017, respectively.²⁰

Finally, Charter has been awarded two Census Block Groups, representing the towns of Hawley, Charlemont, Monroe, and Rowe, that are partially served for purposes of RDOF. These towns have received broadband grants from MBI and will manage municipal networks that encompass portions of the CBGs through partnerships with a third-party wireline broadband

¹⁸ See *Last Mile Broadband Projects in Massachusetts Project Status as of March 2021*, Massachusetts Broadband Institute, <https://broadband.masstech.org/sites/mbi/files/documents/map-gallery/LastMileTowns-ProjectStatus-20210320.pdf> (last visited Apr. 7, 2021) (showing Russell among "previously served towns").

¹⁹ In Sandisfield, Charter's MBI grant (and 96% connection obligation) excludes a privately owned area, Otis Woodlands, in which the local homeowners' association is funding its own local broadband project. Charter's requested waiver includes both the MBI-funded locations in Sandisfield as well as this homeowner-funded area, which was excluded from the scope of the state grant.

²⁰ Charter completed the deployment in Tyringham, MA by June 30, 2020, and timely included it in its next Form 477 filing in September 2020. Charter only just completed the Hancock project in December 2020, and is currently working on the Sandisfield project.

provider, Westfield Gas & Electric (operating as Whip City Fiber). In both cases, the MBI grants were announced before the creation of the RDOF list of eligible areas, but they were not captured in the FCC's challenge process. The portions of these census blocks receiving non-RDOF should have been excluded from the RDOF Auction.

None of the areas discussed above should have been included in the RDOF Auction. Charter, therefore, has filed the Waiver Petition with the FCC, seeking a limited waiver of its RDOF application and deployment obligations in these areas. In short, Charter is seeking to have these census blocks (and portions of census blocks) removed from its final list of RDOF Census Blocks because they are already served and therefore never should have been included in the RDOF Auction to begin with.

Charter's Waiver Petition is currently pending before the FCC. If the FCC grants the Waiver Petition (either in whole or in part), that action may remove certain census blocks (or portions of census blocks) from Charter's RDOF Census Blocks in Massachusetts. If they are removed from Charter's RDOF Census Blocks, they should likewise be removed from the Charter Entities' ETC designation.

B. The Department can serve the public interest by adopting Charter's proposed process to incorporate future changes to the RDOF Census Blocks to the area of Charter's ETC designation.

Through the RDOF program, Charter will construct new high-speed broadband networks in rural areas of Massachusetts where there would otherwise be no such networks. Massachusetts customers will benefit from Charter's efforts by being able to receive Charter's broadband services. Charter's efforts, however, could get delayed or derailed if, over time, the area of the Charter Entities' ETC designations does not remain consistent with the census blocks in which

Charter is actually receiving RDOF support. Maintaining consistency would be administratively efficient for both the Department and Charter.

Accordingly, Charter respectfully requests that the Department's decision granting the ETC designation include a procedural process by which Charter can refine its RDOF Census Blocks. Charter respectfully requests that the Department incorporate the following schedule to provide certainty for both the Department and Charter:

- In the event of a change to Charter's RDOF Census Blocks in response to Charter's Waiver Petition or otherwise, Charter will file an updated list of its RDOF Census Blocks with the Department and request that the Department refine Charter's ETC designation accordingly;
- Within 7 days of Charter's filing, Charter respectfully requests that the Department issue a notice of the filing providing for public comment as required under G.L. c. 30A and 207 CMR 1.00. Charter requests that this comment period be no longer than 14 days.
- Within 15 days of the close of the comment period, Charter respectfully requests that the Department issue an order on Charter's petition to refine its ETC designation.

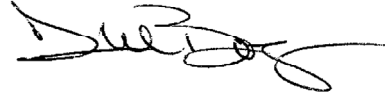
Charter reiterates that this filing seeks a final decision on Charter's Application as drafted. The procedural process outlined above provides an avenue by which Charter can amend its RDOF Census Block information, while acknowledging the Department's authority pursuant to 47 U.S. Code § 214(e)(4). In the event that the FCC denies Charter's Waiver Petition, Charter will notify the Department as soon as practicable. Incorporating future changes to the RDOF Census Blocks will result in no potential harm to the Department or consumers. Because such an incorporation

process will create efficiency, avoid delays and provide business certainty for RDOF participants, the Department's adoption of such a process would serve the public interest.

Wherefore, Charter requests that the Department incorporate and acknowledge the above procedural process in its order on Charter's Application.

Respectfully submitted,

Charter Fiberlink MA-CCO, LLC and Time
Warner Cable Information Services
(Massachusetts), LLC



By: _____

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***Counsel for Charter Fiberlink MA-CCO,
LLC and Time Warner Cable Information
Services (Massachusetts), LLC***

ATTACHMENT A

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rural Digital Opportunity Fund)	WC Docket No. 19-126
)	
Connect America Fund)	WC Docket No. 10-90
)	
Petition of Charter Communications, Inc.;)	
Time Warner Cable Information Services)	
(Kentucky), LLC; Time Warner Cable)	
Information Services (Massachusetts), LLC;)	
Charter Fiberlink CCO-MA, LLC; Charter)	
Fiberlink – Missouri, LLC; Charter Fiberlink)	
CCO, LLC; and Charter Fiberlink VA-CCO,)	
LLC for Waiver of Rural Digital)	
Opportunity Fund Deployment)	
Requirements with Respect to Specific)	
Census Block Groups and Locations in)	
Kentucky, Massachusetts, Missouri,)	
Virginia, and Wisconsin)	

PETITION FOR WAIVER

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EXECUTIVE SUMMARY

Charter Communications was one of the largest participants in the RDOF auction, bidding on 7,395 census block groups (“CBGs”) and ultimately being assigned winning bids for 5,366, representing approximately 1.06 million homes and small businesses across 24 states. Charter will be bringing fiber-to-the-premise (“FTTP”) gigabit, low latency broadband internet access service to these unserved homes and small businesses for remote learning, telework, telemedicine, and a multitude of other applications. In order to advance that goal—while maintaining the focus of RDOF support on its primary purpose of bringing broadband to unserved areas—Charter now seeks a limited waiver of its RDOF application and deployment obligations in Massachusetts, and in small areas in Kentucky, Missouri, Virginia, and Wisconsin.

To help address known gaps in deployment data and to ensure scarce federal support was used effectively to connect unserved homes and small businesses, the Commission offered a limited, voluntary challenge process prior to the RDOF auction. The challenge process allowed parties to identify census blocks that were already served or would soon be served with high-speed broadband, and in which RDOF support was therefore unnecessary. Charter participated in this challenge process and worked to identify any areas in which it had deployed additional broadband facilities subsequent to the Form 477 reports on which the auction areas were based. Given the sheer size of the auction and the varying criteria used to define the scopes and geographies of various state, local, and tribal grant programs, it was inevitable that the challenge process would fail to detect some served or funded areas. As a result, some areas included in the auction in fact were served by a broadband provider, and should not have been included in the RDOF auction. Complicating the situation, many state and local governmental entities and broadband grant recipients did not participate in the challenge process, and Charter is not aware of any comprehensive database of state, local, and tribal broadband support grants that could have been

consulted prior to the auction. Adding to the situation, numerous federal, state, and local entities have continued to award new broadband grants since the auction, particularly given the importance of connectivity during the COVID-19 pandemic. Many of these additional grants were awarded after the list of RDOF-eligible areas was finalized; indeed, a number of these projects have already been completed. Finally, in a small number of instances, census blocks already served by existing providers may not have been fully captured by the Commission's process.

Charter has undertaken an extensive review of the CBGs it won in the auction to identify areas where RDOF support would not advance the program's central purpose of connecting unserved homes and small businesses due to overlaps with broadband grants awarded under other programs. It looked at approximately 1,000 CBGs, and, in approximately 600 of those CBGs, created detailed mapping information for potentially overlapping grants. Throughout this process, Charter has reviewed numerous federal, state, local, and tribal funding programs that had defined the supported areas in varying ways. Through this review, Charter has been able to further refine the list of RDOF areas it won in the auction to identify those that are in fact already served, or will soon be served by another provider with a binding commitment to another government entity.

Charter's experience in Massachusetts provides a compelling example of how such overlaps would prevent RDOF funding from being used to connect unserved areas. There, the RDOF auction included numerous areas within municipalities in which the broadband administrator for the Commonwealth of Massachusetts, the Massachusetts Broadband Institute ("MBI"), had awarded grants for broadband expansion projects prior to the auction through its "Last Mile Program." Because those grants were not identified by recipients during the RDOF challenge process, numerous census blocks in MBI-supported municipalities were incorrectly identified as "wholly unserved" and thus included in the RDOF Phase I auction.

Charter participated in the auction using, among many other sources, the publicly available FCC Form 477 broadband availability data as well as updates to the RDOF CBGs published by the FCC. However, Charter learned soon after the auction from MBI and other parties that these data sources did not reflect some areas where broadband already exists or is soon scheduled to be available. This includes a small number of areas where Charter itself received MBI support, and then inadvertently bid for and won in the RDOF auction. MBI and Charter promptly reached out to each other upon becoming aware of these circumstances. In order to preserve the integrity of the Commonwealth's very successful "Last Mile Program" and (in towns where a third party was awarded state funds) the vitality of MBI's grantees, Charter and MBI agreed that the best outcome would be for Charter not to use RDOF support to deploy its network in these towns but to instead seek a waiver from the Commission to remove these areas from its RDOF obligations.

As part of its review of potential overlaps between areas it won in the RDOF auction and other broadband grant programs, Charter has also discovered smaller, but similar, overlaps in Kentucky, Missouri, Virginia, and Wisconsin where CBGs that Charter won in the auction are already or soon will be served, and asks for limited relief from its deployment obligations in these areas as well. By relieving Charter of the obligation to seek support in areas that already are or will soon be served by high-speed wireline broadband providers, grant of this waiver will further the Commission's intention that its finite universal service support be used in an efficient manner. Moreover, in a small number of CBGs, where a state grant covers only some locations, modifying Charter's obligations to build only to the locations lacking access to high-speed wireline broadband will further the Commission's goal of connecting as many homes and small businesses as possible to the life-enhancing benefits of high-speed broadband.

Specifically, Charter respectfully requests that the Commission waive its rules to modify Charter's RDOF obligations as follows:

1. "Application Modification" Waivers. Relieve Charter from the requirement to apply for support in the following Census Block Groups ("CBGs") it won in the auction (and permit Charter to withdraw these CBGs from its pending long form application), or, in the alternative, allow Charter to default in these CBGs without penalty. Each of these CBGs is already being served, or will soon be served, by Charter itself or by other wireline broadband providers that overlap 95-100% of the estimated locations in the CBG. These include:
 - 33 CBGs in Massachusetts;
 - 5 CBGs in Kentucky;
 - 1 CBG in Missouri; and
 - 2 CBGs in Virginia.
2. "Deployment Modification" Waivers. Modify Charter's deployment obligation to require Charter to build only to locations that lack high-speed, wireline broadband access, and reduce Charter's support and deployment obligations proportionately, in the following CBGs:
 - 2 CBGs in Massachusetts. Of the estimated 673 locations in these two CBGs, 544 are scheduled to receive fiber connections from an MBI grantee by the end of 2021. Charter would like to use RDOF funds to build to the remaining 129 locations that are *not* scheduled to receive FTTP broadband service, with its RDOF support and buildout obligations adjusted proportionately.

- 1 CBG in Wisconsin. Of the estimated 155 locations in this CBG, Charter has already built its network to 62 homes with a grant from the Menominee Indian Tribe of Wisconsin. Charter inadvertently bid for, and won, the RDOF CBG that partially overlaps this tribal grant. However, because an estimated 93 remaining locations in the CBG remain unserved and are not encompassed by Charter's tribal grant, Charter seeks a waiver to allow it to use RDOF support to connect those remaining locations, with its support and buildout obligations adjusted accordingly. The Menominee Indian Tribe supports Charter's request.

In each of the above-identified CBGs, RDOF support is either not needed at all, or is needed only for a portion of the CBG. If Charter builds using RDOF support in areas that overlap a third-party grantee, it would not only be an inefficient use of the Commission's resources, but could also risk undermining the operation of state broadband grant programs by depriving grantees of the subscriber base on which the planning and funding for those projects was predicated. For these reasons, the relevant authorities—the commonwealth and state broadband authorities in Massachusetts (with one caveat), Missouri, and Virginia, county and state representatives in Kentucky, and the Menominee Indian Tribe in Wisconsin—each support or have no opposition to this request.

Charter respectfully requests that the Commission grant this Petition for the reasons set forth herein.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rural Digital Opportunity Fund)	WC Docket No. 19-126
)	
Connect America Fund)	WC Docket No. 10-90
)	
Petition of Charter Communications, Inc.;)	
Time Warner Cable Information Services)	
(Kentucky), LLC; Time Warner Cable)	
Information Services (Massachusetts), LLC;)	
Charter Fiberlink CCO-MA, LLC; Charter)	
Fiberlink – Missouri, LLC; Charter Fiberlink)	
CCO, LLC; and Charter Fiberlink VA-CCO,)	
LLC for Waiver of Rural Digital)	
Opportunity Fund Deployment)	
Requirements with Respect to Specific)	
Census Block Groups and Locations in)	
Kentucky, Massachusetts, Missouri,)	
Virginia, and Wisconsin)	

PETITION FOR WAIVER

Pursuant to section 1.3 of the Commission’s rules,¹ and for the reasons set forth below, Charter Communications, Inc.; Time Warner Cable Information Services (Kentucky), LLC; Time Warner Cable Information Services (Massachusetts), LLC; Charter Fiberlink CCO-MA, LLC; Charter Fiberlink – Missouri, LLC; Charter Fiberlink CCO, LLC; and Charter Fiberlink VA-CCO, LLC (collectively, “Charter”)² respectfully request limited waivers of Charter’s Rural Digital Opportunity Fund (“RDOF”) application and deployment requirements with respect to specific

¹ 47 C.F.R. § 1.3.

² Charter’s affiliate CCO Holdings, LLC (“CCO Holdings”) was the winning bidder in the subject CBGs in the Phase One auction, and assigned its bids to state affiliates in each jurisdiction. Charter brings this Petition on behalf of its affiliates who will ultimately receive RDOF support and carry out Charter’s relevant RDOF obligations in each state, and, for simplicity, will refer collectively to itself and its affiliates as “Charter” unless otherwise noted.

areas in Massachusetts, and small portions of Kentucky, Missouri, Virginia, and Wisconsin, as described in this Petition. In each state, this Petition requests a waiver with respect to certain identified areas that another provider or Charter itself already serves, or will serve, with high-speed wireline broadband services, in almost all cases pursuant to a broadband grant from state or Tribal authorities.

I. BACKGROUND

A. Charter's Commitment and Efforts to Deploy Broadband to Rural Areas

Through its affiliate CCO Holdings, Charter participated in the RDOF auction and was the winning bidder for \$1.2 billion in RDOF support to supplement the cost of connecting an estimated 1,057,695 homes and small businesses in 24 states. To meet this tremendous commitment, Charter expects to invest several billion dollars of its own funds—on top of its RDOF support—to bring gigabit, low latency service to these locations. These newly served homes and small businesses will have access to Charter's network, enabling engagement in remote learning, work, telemedicine, and other applications that require high-bandwidth, low-latency connectivity. To achieve this goal, Charter is expanding its existing construction organization in order to focus on deployment of this new fiber optic network, and expects to hire more than 2,000 employees and contractors to support the RDOF and future rural buildout initiatives.³

Charter has a proven track record that demonstrates its ability and commitment to successfully and timely meet its RDOF buildout requirements. In the last three years alone,

³ See Press Release, Charter Communications, *Charter Communications Launches New Multiyear, Multibillion-Dollar Initiative To Expand Broadband Availability To Over 1 Million New Customer Locations* (Feb. 1, 2021), <https://corporate.charter.com/newsroom/charter-communications-launches-new-multiyear-multibillion-dollar-initiative-to-expand-broadband-availability-to-over-1-million-new-customer-locations>.

Charter has extended its network to reach an additional 2.5 million homes and small businesses, about a third of them in rural areas.

B. Exclusion of Areas with State Broadband Grant Support from the RDOF Auction

To “ensur[e] that [the] finite universal service support is awarded in an efficient and cost-effective manner and does not go toward overbuilding areas that already have service,”⁴ the Commission limited eligibility for Phase One of the RDOF auction to unserved census blocks. In order to identify eligible areas, the Commission identified a preliminary list of census blocks lacking broadband deployment based upon a review of the most recent publicly available Form 477 data, which (at the time) represented deployment as of June 30, 2019.⁵

The Commission recognized that there would be an “inevitable lag between the time when areas are served and the time that service is reflected in publicly available FCC Form 477 data.”⁶ To account for subsequent deployment and to identify areas in which broadband would otherwise become available under state programs, the Commission directed the Wireline Competition Bureau and the Office of Economics and Analytics to conduct a limited challenge process.⁷ The Commission’s challenge process offered an opportunity to prevent RDOF support from being used to overbuild areas where broadband service was already available, or would soon become available. It did so by identifying additional census blocks in which providers had deployed

⁴ *In re Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 692 ¶ 13 (2020) (“*RDOF Order*”).

⁵ *Id.* at 690 ¶ 10; *Wireline Competition Bureau and Office of Economics and Analytics Release Updated List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction*, Public Notice, 35 FCC Rcd 6499, 6499-500 (2020) (“*Challenge Process PN*”).

⁶ *RDOF Order*, 35 FCC Rcd at 692-93 ¶ 14.

⁷ *Id.*

broadband facilities subsequent to the June 30, 2019 Form 477 data, or had received state or other support to deploy, so that the Commission could exclude those census blocks from the auction.⁸

Charter participated in this challenge process and diligently worked to identify any areas in which it had subsequently deployed additional broadband facilities (as reflected in its December 2019 Form 477 submission), as well as areas in which it had assumed forthcoming deployment obligations under state broadband grants.⁹ Other RDOF program participants, incumbent providers, and state agencies, but not all, also participated in this challenge process, identifying areas where there had been subsequent broadband deployment or for which there were deployment obligations under state grants or contracts.¹⁰

Charter subsequently participated in the RDOF auction, bid on 7,395 CBGs, and was assigned winning bids for approximately 1.06 million locations in 5,366 CBGs.¹¹

C. Overlap Between RDOF Supported Areas, State Broadband Grants, and Other Broadband Deployment

Charter consulted publicly available broadband availability data, including FCC Form 477 broadband availability data and published updates to the RDOF eligible areas, during its preparation for and participation in the auction. After the auction results were announced, Charter became aware from the Massachusetts Broadband Institute (“MBI”)¹² and others that MBI

⁸ *Id.*; *Challenge Process PN*, 35 FCC Rcd at 6499-500.

⁹ *Challenge Process PN*, 35 FCC Rcd at 6506, Appendix. Charter also separately sought (and the Commission granted) a waiver to exclude from the auction areas in which Charter had assumed binding regulatory obligations to deploy its network in upstate New York. *See In re Rural Digital Opportunity Fund*, Order, 35 FCC Rcd 6490 (WCB 2020) (“*New York Waiver Order*”).

¹⁰ *Challenge Process PN*, 35 FCC Rcd at 6500-01, 6505-10.

¹¹ *FCC Rural Digital Opportunity Fund Phase I Auction, Auction ID: 904, Winning Bidder Summary*, Attachment A 4-5 (Dec. 7, 2020), <https://docs.fcc.gov/public/attachments/DA-20-1422A2.pdf>.

¹² MBI is a division of the Massachusetts Technology Collaborative (“MassTech”). The Commonwealth created MBI when signing into law the 2008 Broadband Act. Its mission is to

broadband grants were not reflected in those data sources, and that Charter’s winning bids included Massachusetts towns in which MBI had already awarded broadband support to other providers. Upon further investigation, Charter discovered numerous instances in Massachusetts, as well as some instances in other states, in which state broadband programs are already providing support to providers other than the RDOF auction winners to provide high-speed broadband service in the same areas. In addition, Charter discovered a smaller number of instances in which areas included in the auction are already served by an existing broadband provider. In both instances, these circumstances obviate the continued need for RDOF funding for these areas because the areas will be served without such support.

Identification of instances in which both RDOF and a state (or municipal, tribal or other federal) broadband program are supporting broadband deployment to the same areas is an extremely fact-intensive and time-intensive exercise.¹³ Although the *RDOF Order* envisioned that

make affordable high-speed internet available to all homes, businesses, schools, libraries, medical facilities, government offices, and other public places across the Commonwealth. MassTech is a public agency that supports business formation and growth in Massachusetts’ technology sector, helping the commonwealth lead in the global digital economy. MBI’s board of directors consists of four gubernatorial appointees and a number of ex officio board seats held by the Chair of the Governing Board of the Innovation Institute at MassTech, the secretaries for Administration and Finance and Housing and Economic Development in the Commonwealth, MassTech’s Executive Director and the Commissioner of the Massachusetts Department of Telecommunications and Cable (see <https://broadband.masstech.org/meet-masstech/our-team/board>). The Director of MBI is a member of the senior management team of MassTech’s Executive Director.

¹³ At the time the Commission issued the *RDOF Order*, then-Commissioner Rosenworcel and Commissioner Starks each raised concerns that the Commission lacked sufficient visibility into the parallel state broadband programs providing support for broadband buildout, and the areas that those programs were targeting, albeit in opposition to the Commission’s decision to foreclose the combined use of federal and state funds to improve supported service. *See RDOF Order*, 35 FCC Rcd at 786 (Statement of Commissioner Jessica Rosenworcel Approving in Part and Dissenting in Part) (“nowhere in this decision do we itemize” the areas “where [states] have sought to extend the reach of broadband”); *RDOF Order*, 35 FCC Rcd at 790 (Statement of Commissioner Geoffrey Starks Approving in Part and Dissenting in Part) (expressing concern that the Commission had not developed “a plan to ensure we have canvassed all relevant state programs”).

a limited challenge process would be able to identify such areas, many state and local governmental broadband agencies and grantees did not avail themselves of that process. Moreover, the numerous broadband support programs by state, local, and tribal governments that might be candidates for overlap with RDOF areas are not comprehensively itemized in any authoritative repository of which Charter is aware. Indeed, the full terms of many such grants are not publicized at all; as Charter has undertaken this review, it has in numerous instances had to reach out to state broadband agencies to obtain details regarding their grants so that Charter could undertake an analysis of any potential overlap.

Even after Charter identified projects that might be candidates for overlapping support between different government agencies, comparing the supported areas was a time-consuming process. Different programs use differing criteria to define the areas in which support is provided, complicating ready comparison among programs. For instance, although the RDOF Phase I auction defined the supported geographic areas using entire census blocks, many other programs define the supported areas using other criteria, such as:

- a. Municipal boundaries;
- b. Lists of the specific addresses set forth in an application for support;
- c. Maps of an award area with the project boundary outlined;
- d. Maps of an award area with lines representing streets that will be covered;
- e. Geospatial files outlining project boundaries;
- f. Geospatial files containing lines representing streets along which facilities are to be deployed;
- g. Geospatial files with points representing specific locations that will be covered; and
- h. Online maps depicting the covered areas.

Cross-referencing RDOF-supported areas against state-supported areas, therefore, is not an apples-to-apples comparison, or even an apples-to-oranges one—it is more akin to comparing

apples to oranges, bananas, pineapples, grapes, and strawberries. Charter has been engaged in the time- and personnel-intensive task of converting these varying formats into a common basis for comparison by manually geocoding addresses, streets, and project boundaries so that the state grants can be meaningfully cross-referenced against the RDOF census blocks—and doing so hundreds of times. In order to review state, local, and tribal broadband grants for possible overlap with RDOF areas, Charter has undertaken a visual review to evaluate potential overlaps in approximately 1,000 CBGs, and then had to proceed to this much more detailed mapping analysis in over 600 CBGs and grant applications.

Charter has now coordinated with the relevant officials in Kentucky, Massachusetts, Missouri, Virginia, and Wisconsin regarding areas of substantial overlap between Charter’s RDOF areas and non-RDOF grants in each jurisdiction. This waiver request is the result of this coordination. The specific areas at issue are itemized in the charts on pages 12-13 and 15, *infra*, and described and identified in greater detail below.

1. **“Application Modification” Waiver Requests: CBGs Already Served or Scheduled to Be Served by Wireline Providers, in Which Charter Seeks to Be Relieved of Its Obligation to Apply for RDOF Support**

Massachusetts

Twenty-eight CBGs in Massachusetts that were included in the RDOF auction (and in which Charter was the winning bidder) are contained within the boundaries of municipalities in which MBI awarded state broadband grants to wireline broadband providers other than Charter prior to the RDOF auction through its “Last Mile Program.”¹⁴ Each of these 28 CBGs is itemized

¹⁴ See generally *Last Mile Programs*, Massachusetts Broadband Institute, <https://broadband.mass.gov/last-mile-programs> (last visited Apr. 7, 2021) (showing award areas and project status). The map does not yet include the MBI grants in Egremont and Monterey, which were only issued very recently, although Fiber Connect, which is constructing those networks, already had deployment in both towns underway prior to its agreement with MBI. A small portion of one of

in **Chart A** on pages 12-13, *infra*. In some cases, in addition to support from the Commonwealth of Massachusetts via MBI, individual broadband projects are supported with additional municipal funds.

Under the terms of the grants issued by MBI, recipients are required to connect at least 96% of eligible locations within the relevant municipality.¹⁵ Based on information shared by MBI, almost all of the projects supported by the Commonwealth of Massachusetts through MBI that are the subject of this Petition are either completed or scheduled for completion by the end of 2021, except for 5 projects that are scheduled to be completed no later than the end of 2022.¹⁶ In addition, although the terms of the MBI Last Mile Program do not require all providers to offer gigabit-capable service, it is Charter's understanding that in the 28 CBGs at issue, the MBI grantees have deployed or are deploying gigabit-capable networks.

In addition to the 28 CBGs that overlap MBI grants, Charter has also learned that 2 additional Massachusetts CBGs included in the Phase One auction—representing the town of Russell, MA and an area in Westfield, MA in the vicinity of Westfield-Barnes Regional Airport—are already served by wireline providers other than Charter. Charter lacks knowledge as to the

the CBGs, located in the town of Leyden, is outside of town boundaries and located in Bernardston, a non-MBI grantee town already served by Comcast. Charter discusses this CBG below.

¹⁵ See *Last Mile Program Policy*, Massachusetts Broadband Institute, <https://broadband.masstech.org/building-networks/last-mile/program-unserved-towns/last-mile-program-policy> (last visited Apr. 7, 2021) (funded programs for Last Mile Program must “reach at least 96% of a community’s residents and provide access to broadband speeds of 25/3 mbps.”); see also Massachusetts Broadband Institute, *Flexible Grant Program Notice of Funding Availability* 4 (Oct. 5, 2017), <https://masstech.org/sites/mtc/files/documents/Legal/2018-MBI-01/Flexible%20Grant%20Program%20NOFA%20MBI-2018-01%20%28FINAL%29.pdf> (setting same 96% objective for Flexible Grant Program). It is Charter's understanding that all MBI grants in areas that are the subject of this Petition require the provider to connect 96% or more of the municipality's residents.

¹⁶ The only five third-party projects expected to extend into 2022 are those in the towns of Becket, Egremont, Middlefield, Monterey, and Tolland.

reason why these two areas were not excluded from the auction; however, in both cases, a wireline broadband service provider is already present in each of the respective CBGs. It is Charter's understanding that the incumbent provider in Russell covers substantial portions of the town.¹⁷ The small area in Westfield, MA in which the pertinent CBG is located is in a developed area near the airport, and Charter has confirmed through a site visit that both Comcast and Westfield Gas & Electric (which operates Whip City Fiber) already appear to have facilities serving residential and commercial locations in the CBG.

Finally, Charter has also discovered 3 CBGs in Massachusetts in which Charter itself was previously awarded an MBI broadband grant to build to areas that Charter won in the RDOF auction, but which Charter inadvertently omitted during the Commission's challenge process. Through the same MBI programs discussed above, Charter was awarded grants to connect 96% of eligible locations in the towns of Hancock, Sandisfield,¹⁸ and Tyringham, which encompass three CBGs which Charter inadvertently bid for and won in the RDOF auction. Grant agreements for Charter to serve these towns using MBI (and in some instances town-specific) funding were authorized in July 2017, August 2019, and July 2017, respectively.¹⁹

¹⁷ See *Last Mile Broadband Projects in Massachusetts Project Status as of March 2021*, Massachusetts Broadband Institute, <https://broadband.masstech.org/sites/mbi/files/documents/map-gallery/LastMileTowns-ProjectStatus-20210320.pdf> (last visited Apr. 7, 2021) (showing Russell among "previously served towns").

¹⁸ In Sandisfield, Charter's MBI grant (and 96% connection obligation) excludes a privately owned area, Otis Woodlands, in which the local homeowners' association is funding its own local broadband project. Charter's requested waiver includes both the MBI-funded locations in Sandisfield as well as this homeowner-funded area, which was excluded from the scope of the state grant.

¹⁹ Charter completed the deployment in Tyringham, MA by June 30, 2020, and timely included it in its next Form 477 filing in September 2020. Charter only just completed the Hancock project in December 2020, and is currently working on the Sandisfield project.

Combined, these 33 CBGs in Massachusetts, each of which is itemized on **Chart A** on pages 12-13 below, represent 12,213 estimated locations and \$16,604,116 in RDOF support. Through this Petition, Charter requests that the Commission waive the RDOF program requirements by relieving Charter of the obligation to seek support in these CBGs and allow Charter to remove them from its pending long-form application.

Kentucky

Five CBGs in Kentucky that were included in the RDOF auction (and in which Charter was the winning bidder) are contained entirely within the service area of Bardstown Connect (formerly Bardstown Cable TV & Internet), a local municipal provider that serves Bardstown, Kentucky and the surrounding regions.²⁰ Bardstown Connect advertises broadband internet access services through its cable network with speeds up to 200 Mbps throughout its service area, and residential fiber internet service with speeds of up to 1 Gbps within select areas.²¹ Charter lacks knowledge as to how these areas came to be included in the RDOF auction and why they were not reflected in the Commission's Form 477 data on which the eligible areas list was based; however, the areas are already served and not in need of federal broadband support. Charter was unaware of the existing service offerings from Bardstown Connect at the time of its bidding in the auction, but the existing service offerings became apparent as Charter began the process of applying for pole attachment permits to construct its network in the area. Collectively, these five CBGs represent an estimated 549 locations and \$266,832 in support. Charter has conferred with both

²⁰ See *Coverage Area*, Bardstown Connect <https://www.bardstownconnect.com/#coverage> (last visited May 9, 2021).

²¹ See *Residential Internet Packages*, Bardstown Connect, <https://www.bardstownconnect.com/high-speed-internet/for-home/internet-packages/> (last visited May 9, 2021).

county and state officials representing Bardstown and confirmed that those officials support Charter's request to forego RDOF support to construct an overlapping network in these areas.

Missouri

In one CBG in Howard County, MO that Charter won in the RDOF auction, Charter has discovered that the CBG is already being served by another provider pursuant to a state broadband grant awarded after finalization of the eligible areas list for the RDOF auction.

In this CBG, pursuant to an August 2020 grant using Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") funding, Glasgow AirLink Rural Broadband, LLC has constructed a fiber-to-the-home network, capable of offering speeds of at least 1Gbps/100 Mbps. The grant area completely encompasses the CBG won by Charter in the RDOF auction. This CBG represents an estimated 480 locations and \$53,365 in support. Charter has conferred with the Missouri Department of Economic Development, which has confirmed that this project is already complete, and that the Department supports Charter's request to be relieved of the obligation to build to this area using RDOF support.

Virginia

In two RDOF CBGs in Surry County, VA that Charter won in the RDOF auction, a state broadband grant had been awarded to Prince George Electric Cooperative on February 4, 2020, but was not identified to the Commission as part of the RDOF challenge process. Under the terms of that grant, the recipient is required to deploy its gigabit-capable fiber-to-the-home ("FTTH") network to 95-96% of the estimated locations in the CBGs by October 31, 2021. These two CBGs represent, respectively (1) 467 estimated locations and \$71,156 in support, and (2) 289 estimated locations and \$44,395 in support. Charter has conferred with the Office of Broadband within the

Virginia Department of Housing and Community Development, which supports Charter’s request for a waiver with respect to these areas.

* * * *

Together, the CBGs where Charter seeks to be relieved of its obligation to apply for RDOF support, and that Charter wishes to exclude from its long form application without facing penalties for a default, are as follows:

Chart A—CBGs Subject to Application Modification Waiver Request				
State	CBG	Municipality²²	Grantor	Provider
KY	211799303011	Bardstown	Existing	Bardstown Connect (municipal cable/fiber)
KY	211799303012	Bardstown	Existing	Bardstown Connect (municipal cable/fiber)
KY	211799303022	Bardstown	Existing	Bardstown Connect (municipal cable/fiber)
KY	211799303023	Bardstown	Existing	Bardstown Connect (municipal cable/fiber)
KY	211799303032	Bardstown	Existing	Bardstown Connect (municipal cable/fiber)
MA	250039343001	Alford	MBI	Municipal FTTH served by Whip City Fiber
MA	250110415011	Ashfield	MBI	Municipal FTTH served by Whip City Fiber
MA	250110415012	Ashfield	MBI	Municipal FTTH served by Whip City Fiber
MA	250039322002	Becket	MBI	Municipal FTTH served by Whip City Fiber
MA	250039322003	Becket	MBI	Municipal FTTH served by Whip City Fiber
MA	250110402001	Leyden ²³	MBI	Municipal FTTH served by Whip City Fiber
MA	250138130004	Blandford	MBI	Municipal FTTH served by Whip City Fiber
MA	250138130003	Chester	MBI	Comcast
MA	250158226051	Chesterfield	MBI	Municipal FTTH served by Whip City Fiber
MA	250110401002	Colrain; Heath	MBI	Municipal FTTH served by Whip City Fiber
MA	250110401003	Colrain	MBI	Municipal FTTH served by Whip City Fiber
MA	250158227002	Cummington	MBI	Municipal FTTH served by Whip City Fiber
MA	250039343002	Egremont	MBI	Municipal FTTH served by Fiber Connect
		Mount Washington	MBI	Municipal FTTH served by Crocker
MA	250158226061	Goshen	MBI	Municipal FTTH served by Whip City Fiber

²² Each of the 28 MBI-supported CBGs at issue is contained entirely within municipal areas subject to the terms of these grants, with one minor exception discussed in the following footnote (where a small portion of the CBG is in a neighboring town served by Comcast without an MBI grant). As a result, the MBI grants will require service to all or almost all locations within the CBG.

²³ In CBG 250110402001, a small portion of the CBG is located in the neighboring town, Bernardston, which Comcast serves without an MBI grant. However, MBI’s mapping data indicates that all unserved locations in the CBG are located in Leyden, and not in Bernardston. Although Charter has not independently verified through a physical survey, Charter’s visual inspection of satellite photos appears to be consistent with the conclusion that the Bernardston areas of the CBG contain few, if any, unserved locations.

Chart A—CBGs Subject to Application Modification Waiver Request				
State	CBG	Municipality ²²	Grantor	Provider
MA	250039351002	Hancock	MBI	Charter
MA	250039332002	Monterey	MBI	Municipal FTTH served by Fiber Connect
MA	250039351001	New Ashford	MBI	Municipal FTTH served by Whip City Fiber
MA	250110406003	New Salem	MBI	Municipal FTTH served by Whip City Fiber
MA	250039334001	Otis	MBI	Municipal FTTH served by Whip City Fiber
MA	250039334002	Otis	MBI	Municipal FTTH served by Whip City Fiber
MA	250277042002	Petersham	MBI	Municipal FTTH served by Matrix Connected Fiber
MA	250158227001	Plainfield	MBI	Municipal FTTH served by Whip City Fiber
MA	250138130002	Russell	Existing	Russell (as Municipal Cable Provider)
MA	250039334003	Sandisfield	MBI	Charter
MA	250110415024	Shelburne	MBI	Comcast
MA	250110406002	Shutesbury	MBI	Municipal FTTH served by Crocker
MA	250138130005	Tolland	MBI	Comcast
MA	250039332001	Tyringham	MBI	Charter
MA	250039322001	Washington	MBI	Municipal FTTH served by Whip City Fiber
MA	250110404003	Wendell	MBI	Municipal FTTH served by Whip City Fiber
MA	250138128003	Westfield	Existing	Comcast; Whip City Fiber
MA	250039314001	Windsor	MBI	Municipal FTTH served by Whip City Fiber
MA	250158227003	Worthington; Middlefield	MBI	Comcast
MO	290899601003	Howard County	CARES Act	Glasgow AirLink Rural Broadband, LLC
VA	511818601001	Surry County	VA State Grant	Prince George Electric Cooperative
VA	511818602001	Surry County	VA State Grant	Prince George Electric Cooperative

2. “Deployment Modification” Waiver Requests: CBGs Partially Served or Scheduled to Be Served by Wireline Providers, in Which Charter Seeks Correspondingly Reduced Support and Deployment Obligations

Massachusetts

In 2 CBGs in Massachusetts in which Charter was the winning RDOF bidder, representing the towns of Hawley, Charlemont, Monroe, and Rowe, the towns have received broadband grants from MBI and will manage municipal networks that encompass portions of the CBGs through partnerships with a third-party wireline broadband provider, Westfield Gas & Electric (operating as Whip City Fiber). In both cases, the MBI grants were announced before the creation of the RDOF list of eligible areas, but not captured in the Commission’s challenge process. These CBGs,

which are itemized in **Chart B** on page 15 below, represent 673 estimated locations and \$1,303,974 in RDOF support in total.

Through this Petition, Charter requests that the Commission exclude the 544 locations served or scheduled to be served by Whip City Fiber as the wireline partner for the municipal broadband providers in Charlemont and Rowe (*i.e.*, the rows bolded and shaded in the chart at the end of this section) from Charter's RDOF deployment obligation. Charter further requests that the FCC reduce proportionately Charter's RDOF support in Massachusetts accordingly, while retaining Charter's obligation to deploy its network to (and the associated support amounts for) the remaining 129 locations in Hawley and Monroe. A proportionate, *pro rata* reduction of Charter's RDOF support for these CBGs would result in a reduction of support from \$1,587,210 to \$304,234.

Wisconsin

Through its review of potentially overlapping state broadband grant programs, Charter has also identified a small area in Wisconsin where Charter itself—through a September 2020 tribal broadband grant from the Menominee Indian Tribe of Wisconsin—recently deployed its network to 62 locations located within a CBG it won in the RDOF auction. In September 2020, several months after the Commission had finalized the list of CBGs to be included in the RDOF Auction, the Menominee Indian Tribe awarded Charter funding (through a CARES Act grant) to deploy its broadband network along identified road segments within the Tribe's reservation. The project connected 223 locations to Charter's high-speed broadband network, and was completed by the end of 2020 (with some subsequent additions). Charter has constructed these areas with a mix of FTTP and hybrid fiber-coaxial plant. Charter has since realized that 62 of those 223 locations fall within a CBG that Charter subsequently won in the RDOF auction. As the tribal broadband grant

was not defined on a census block basis, the small overlap with areas included in the auction was not immediately apparent to Charter.

This CBG in Wisconsin represents \$114,458 in support; the requested waiver, if granted, would reduce the support by \$45,819.20 to \$68,728.80.

* * * *

Together, the CBGs in which Charter seeks to modify its deployment obligations, by excluding the bolded locations, are as follows.

Chart B—CBGs Subject to Deployment Modification Request				
State	CBG	Municipality	Municipal Broadband Provider	CAM-Estimated Locations
MA	250110401004	Hawley ²⁴	WiValley/OTELCO	66
		Charlemont	Municipal FTTH served by Whip City Fiber	88
MA	250110401001	Charlemont	Municipal FTTH served by Whip City Fiber	456
		Rowe	Municipal FTTH served by Whip City Fiber	
		Monroe	WiValley/OTELCO	63
WI	550789401022	Menominee Reservation	Charter	152 (62 served ; 93 estimated unserved locations remaining)

II. SCOPE OF THE WAIVERS REQUESTED

As the facts set forth above make clear, there are instances in Massachusetts, and a handful of instances in Kentucky, Missouri, Virginia, and Wisconsin, in which Charter's receipt of federal support through the RDOF program to expand its broadband network would not represent an

²⁴ The wireless broadband projects in Hawley and Monroe, which will not offer gigabit speeds, are also receiving MBI support under the terms of a separate 2019 MBI grant. MBI has advised Charter that although MBI supports Charter's Petition for a waiver, MBI's support does not extend to Charter's request to retain RDOF support to extend its service in these two towns, and that MBI would prefer that Charter withdraw these two towns from its RDOF application as well.

effective use of the Commission's universal service resources. Charter therefore requests a waiver of its RDOF obligations as follows:

First, Charter respectfully requests that the Commission grant waivers in the Kentucky, Massachusetts, Missouri, and Virginia CBGs identified in **Chart A** by (1) relieving Charter of any obligation to apply for support in these CBGs so that Charter can remove them from its pending long form application, and (2) returning the relevant support amounts to the Universal Service Fund for future use by the Commission to support universal service. In the alternative, Charter requests that the Commission permit Charter to default on these 41 CBGs prior to authorization without incurring forfeitures or other penalties. This Petition will refer to the requested waivers in these 41 CBGs as "Application Modification Waivers."

Second, Charter respectfully requests that the Commission grant waivers in the Massachusetts and Wisconsin CBGs identified on **Chart B** by (1) reducing Charter's RDOF deployment obligation by the number of estimated locations being served by wireline MBI grantees (in the two Massachusetts CBGs) or by Charter itself (in the Wisconsin CBG), and (2) reducing Charter's RDOF support for these CBGs *pro rata*. This Petition will refer to the requested waivers in these 3 CBGs as "Deployment Modification Waivers."

III. THE REQUESTED LIMITED WAIVERS WOULD SERVE THE PUBLIC INTEREST.

The Commission may waive any provision of its rules "if good cause therefor is shown."²⁵ The Commission has found that good cause exists to waive its rules "where special circumstances warrant a deviation from the general rule, such deviation serves the public interest, and a waiver

²⁵ 47 C.F.R. § 1.3.

would be consistent with the principles underlying the rule.”²⁶ The waivers requested here each satisfy this standard as set forth below.

A. Granting the Application Modification Waivers Will Conserve Finite Resources and Avoid Interference with State Broadband Programs, with No Harm to the Public Interest.

Grant of the requested Application Modification Waivers will ensure that finite federal resources are most effectively deployed, thereby serving the central purpose of the RDOF auction: bringing service to unserved areas. Grant of these waivers will also protect the integrity and success of state broadband grant programs by avoiding an unnecessary overbuild in CBGs where 95-100% of the estimated locations either already have, or are expected to soon receive, high-speed internet service. Granting the relief requested in this Petition will therefore serve the public interest. Conversely, strict application of the Commission’s RDOF rules in these instances would undermine the Commission’s goal of distributing and using its universal service funds where they are most needed.

First, relieving Charter of the obligation to apply for support in these CBGs and allowing it to remove them from its long form application would promote the public interest by “ensur[ing] that [the] finite universal service support is awarded in an efficient and cost-effective manner and does not go toward overbuilding areas that already have service.”²⁷ Where a broadband provider has already built, or has an obligation to build, high-speed wireline broadband, Charter’s overbuilding all or almost all of those same locations would be a waste of federal resources, particularly where, as here, most such providers have deployed or will be deploying gigabit-capable fiber networks. By waiving Charter’s obligation to build to these locations and reducing

²⁶ *In re Applications of Intelsat LLC*, Memorandum Opinion Order and Authorization, 15 FCC Rcd 15460, 15486 ¶ 59 (2000).

²⁷ *RDOF Order*, 35 FCC Rcd at 692 ¶ 13.

Charter's RDOF support accordingly, the Commission will conserve limited financial resources that can be used in future universal service efforts. Doing so will maintain focus on the compelling policy priority underlying this RDOF auction: to bring service to unserved areas.

Granting these waivers would be consistent with the Commission's decision, during the challenge process, to exclude from RDOF auction eligibility 2,127 census blocks in New York in which Charter was subject to state broadband deployment obligations.²⁸ There, the Commission found that excluding those census blocks would ensure that the Commission's finite universal service dollars were put to their best use "by not funding another provider to overbuild....," and would further the Commission's universal service goals of directing support "to increase broadband deployment in areas that are unserved or underserved, rather than in areas where a competitor already provides service."²⁹ Here, although the state grants and other areas that are being served were not identified during the Bureau's challenge process, relieving Charter of the requirement to apply for support in these CBGs would continue to advance this Commission goal.

Second, granting these limited waivers will result in no harm to the public interest where, as here, the CBGs at issue are already served by another provider, or by a state grantee that is under a binding commitment to provide high-speed wireline broadband. Specifically, in the 34 CBGs that are the subject of this Petition that already receive or will soon receive high-speed wireline broadband from a state grantee, those grants encompass 95-100% of the estimated locations in the CBGs. And in the 7 CBGs where an unsubsidized provider is already present, existing coverage of the affected areas appears to be very substantial.

²⁸ See generally *New York Waiver Order*.

²⁹ *New York Waiver Order*, 35 FCC Rcd at 6493 ¶ 8.

Third, denial of the Application Modification Waivers could result in harm to the public interest. If Charter is expected to (and proceeds to) deploy its facilities using federal support in areas where state-supported grantees are also deploying their networks and seeking to sign up customers, the effectiveness of the state programs could be jeopardized. As the Commission is aware, rural broadband deployment is cost-intensive due to the need to spread the costs of network buildout over a smaller customer base. For rural deployment projects to be economically viable, it is often necessary for providers to obtain subscription rates much higher than what is necessary for viability in denser, lower-cost urban and suburban areas. Indeed, the Connect America Cost Model used to determine the reserve price for the RDOF auction assumes a 70% subscription rate for deployments to unserved areas, and the Commission's application requirements direct providers to estimate a 70% subscription rate for purposes of designing its network.³⁰

Were Charter to deploy its network with federal support in the same areas in which states have already spent money to expand broadband access, Charter's presence could undercut the economic viability of state projects. In addition, some state grantees and existing unsubsidized providers in these CBGs are themselves municipal entities who partnered with third-party broadband providers (to facilitate a municipal broadband network) and supported those investments with taxpayer dollars. Developments that frustrate the economic viability of those projects—such as market entry by a federally subsidized provider in the same areas—could therefore adversely impact the finances of the towns involved and result in burdens on local taxpayers to sustain the government-run and -operated network. It makes no sense to penalize

³⁰ *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020 Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, 35 FCC Rcd 6077, 6103-04 ¶ 77 (2020).

Charter with forfeitures and other penalties for withdrawing these areas from its application for support to avoid this outcome, when withdrawal would be in the interest of all parties.

These public interest arguments are further bolstered by the fact that the relevant commonwealth and state broadband authorities in Massachusetts, Missouri, and Virginia, and county and state representatives in Kentucky, each either support, or in the alternative, have no objection to, this waiver. The States and local officials recognize that the homes and small businesses in these areas are already being served by a state grant, and that state resources could be wasted or undercut if a federally-subsidized competitor deploys into the same areas.³¹ In these situations, relieving the winning bidder of the requirement to apply for RDOF support in these CBGs promotes the public interest by ensuring that all homes and small businesses in these remote areas are served by high-speed broadband, while at the same time state resources are not threatened by bringing an overbuilder to the same locations.

Along these same lines, the public interest will also be served if Charter is relieved of its RDOF deployment obligations in the 3 Massachusetts CBGs which Charter has itself received an MBI state grant—Hancock, Sandisfield, and Tyringham—with no corresponding harm to the public interest. Charter is mindful that the Commission’s *RDOF Order* does not allow a provider to satisfy its RDOF deployment obligations with locations in which it had an independent and pre-existing legal or regulatory obligation to another government body to deploy its network. Charter is therefore seeking to remove these 3 CBGs from its list of winning CBGs. Importantly, the

³¹ As noted in note 24, MBI would prefer that this Petition go even further by removing two additional MBI-supported towns, Hawley and Monroe, from Charter’s RDOF application (*i.e.*, those where the town receiving MBI support is partnering with a wireless provider) in addition to the removals sought by this Petition. Charter prefers—if this waiver is granted—to continue to build to the areas of Hawley and Monroe in which it was the winning bidder, consistent with its commitment to bring gigabit broadband to areas that would otherwise lack it.

public interest will be served by granting this request, since the MBI grants already require Charter to connect virtually all homes in the subject CBGs with high-speed broadband,³² and the RDOF funds will be returned to the Commission for future use to support universal service.

Finally, Charter's need for this waiver does not arise from any violation of the Commission's rules. In the 38 CBGs served by another provider, Charter was unaware that its bid in the auction would result in overbuilding another provider because the areas were either included in the auction in error, or the state grants postdated the finalization of the eligible areas list. And in the three CBGs served by Charter itself, Charter complied with its Form 477 reporting obligations. The census blocks at issue in those three 3 CBGs were all still unserved by Charter when it filed its June 2019 and December 2019 Form 477 filings used to identify the eligible areas list and challenges for the auction. Charter also did not purposefully omit these three towns from its challenges or bid on CBGs in which it had pending state commitments, but rather was unsuccessful in its efforts to identify every possible overlap between the auction and its own dynamic service areas, which are continuously growing as the company expands its footprint.³³ Now that Charter *has* become aware that these locations overlap, it is promptly bringing them to the Commission's attention.

³² As noted above, Charter's MBI grant for Sandisfield, MA excludes the privately owned Otis Woodlands area. However, Charter's deployment of its network in that area—where it would undermine a homeowners association's investment in their own local facilities—would not be in the public interest, for the same reasons that it would be undesirable for Charter to overbuild third-party MBI grantees.

³³ Participation in the challenge process was optional; although Charter's failure to identify these areas earlier or structure its bidding to avoid them in the auction was inadvertent, those omissions did not violate any rule or Commission order. *See RDOF Order*, 35 FCC Rcd at 770, Appendix B ¶ 41 ("interested parties *may* also identify areas that have been served since they have submitted the most recent publicly available FCC Form 477 data or identify areas that have been awarded funding through federal or state broadband subsidy programs to provide 25/3 Mbps or better service." (emphasis added)).

B. Granting the Deployment Modification Waivers Will Help Close the Digital Divide and Avoid an Unintended Loss of Support to Unserved Homes and Small Businesses.

The requested Deployment Modification Waivers in Massachusetts and Wisconsin will enable RDOF support to be used for its intended purpose of closing the digital divide, ensuring that an estimated 222 unserved homes and businesses are not deprived of broadband service for what could be many more years. A grant of these waivers could also avoid the paradoxical effect of causing state broadband support to cause residents and small businesses in the impacted CBGs to lose the opportunity to receive broadband access for many more years. Moreover, the overlap here was inadvertent and the request for a waiver does not arise from any violation of the Commission's rules.

First, granting these waivers will further the goals of the auction by allowing Charter to use reduced RDOF support to connect the estimated 222 remaining locations without wireline high-speed broadband access in these three CBGs, enabling these homes and small businesses in Massachusetts and Wisconsin to benefit from gigabit connections over Charter's FTTP network at the earliest possible date.

With respect to the Wisconsin CBG, Charter is mindful that the Commission's *RDOF Order* does not allow a provider to use RDOF support to connect locations where the provider was already subject to a pre-existing, independent obligation to deploy its network prior to the auction.³⁴ Here, Charter's grant from the Menominee Indian Tribe was awarded before winning

³⁴ See *RDOF Order*, 35 FCC Rcd at 692-93, 709 ¶¶ 14, 45 n.135. At the time the *RDOF Order* instituted this prohibition against leveraging a combination of federal and state support for network deployment, Commissioners Rosenworcel and Starks expressed concern that this policy could have the effect of, inter alia, penalizing states who supported local broadband deployment projects. See *RDOF Order*, 35 FCC Rcd at 786 (Statement of Commissioner Jessica Rosenworcel Approving in Part, Dissenting in Part), 790 (Statement of Commissioner Geoffrey Starks Approving in Part and Dissenting in Part). Strict application of the requirement here would have the effect of penalizing residents and small businesses in the three CBGs at issue because the

bids in the auction were assigned. As a result, Charter is concerned that even a *de minimis* overlap between this grant and its winning RDOF bids could preclude Charter from counting locations in the pertinent CBG towards its RDOF deployment commitments. And with respect to the two Massachusetts CBGs, MBI does not wish for Charter to deploy a federally-subsidized network into the towns where it has provided state support. Deploying Charter's network into these CBGs in full, where most areas will already have access to state-supported Gigabit FTTP service, is also unlikely to make much business sense for Charter.

In both cases, allowing Charter to exclude the overlapping locations would resolve these issues in a way that best promotes the public interest: Charter returns a proportionate amount of RDOF support that the Commission can use to support universal service, while the homes and small businesses in the CBGs without access to high-speed wireline broadband access will receive FTTP gigabit service years before they otherwise would.

Second, there would be no corresponding public interest harm from granting the waivers requested. Charter is not requesting a limited waiver from its deployment obligation in order to *avoid* building broadband facilities to reach all locations within these 3 CBGs. Rather, either Charter or a third party is already offering or scheduled to offer high-speed wireline broadband service to 606 of those locations, and Charter wishes to serve the remaining 222 locations.

Third, Charter's need for these waivers does not arise from any violation of the Commission's rules. In Menominee, Charter complied with its Form 477 reporting obligations; the facilities at issue were not yet deployed at the time of the reports used to assemble the eligible areas list, and Charter bid on the CBG before it became aware of the overlap. And in the two

state/tribal grants could otherwise arguably prevent Charter from using RDOF support to deploy its Gigabit FTTP network nearby.

Massachusetts CBGs, Charter was unaware that the towns in the CBGs were already the subject of an MBI grant to a third party. Now that Charter has become aware that these locations overlap, it is promptly bringing them to the Commission's attention. Moreover, Charter gained no advantage from failing to recognize these overlaps prior to bidding—to the contrary, unless the Commission grants the requested waiver, Charter stands to lose the opportunity to extend services to over two hundred unserved homes and small businesses in these areas.

CONCLUSION

Grant of the Application Modification and Deployment Modification Waivers requested herein will promote the public interest by ensuring broadband resources are used most efficiently and effectively, and bring high-speed broadband to as many unserved households as possible, as quickly as possible. Charter respectfully requests that the Commission grant the requested waivers.

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Respectfully submitted,

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